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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TAXPAYERS FOR A SAFE VENTURA COUNTY, a California non-profit corporation, Plaintiff, J. CLARK KELSO, in his capacity as Receiver in United States District Court Case No. C01-1351 TEH; CALIFORNIA PRISON HEALTHCARE RECEIVERSHIP CORP., a California non-profit corporation. Defendants.	Case No.: CV 09-0479 SJO (JTLx) **TAXPAYERS FOR A SAFE VENTURA COUNTY'S OPPOSITION TO DEFENDANTS J. CLARK KELSO AND CALIFORNIA PRISON HEALTH CARE RECEIVERSHIP'S MOTION TO DISMISS COMPLAINT**

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STATEMENT OF FACTS

In August of 2001, California state prison inmate Marciano Plata and other similarly situated prisoners filed a class action suit in the U.S. District Court, Plata, et al. v. Arnold Schwarzenegger, et al., United States District Court, Northern District of California, Case No. C-01-1351 TEH, against the Governor of California, the Director of the California Department of Corrections and Rehabilitation ("CDCR"), and other state agencies and agents alleging, among other things, inadequate medical care within California state prisons. See Ex. 1 of Defendants' Motion to Dismiss.

In 2002, the parties to the Plata case stipulated to injunctive relief, which, among other things, called for the Plata Defendants to implement certain "Health Care Services Policies and Procedures" in an effort to remedy the alleged inadequacies of the state prison medical care system ("Stipulation").

On June 6, 2008, after several drafts, Defendants submitted a "Turnaround Plan of Action" ("TPA") to the Court. On June 16, 2008, the Court approved the TPA, but made no findings of fact regarding whether the TPA satisfied the requirements of the PLRA; that the plan be "narrowly drawn" and extend "no further than necessary to correct the violation" and "is the least intrusive means necessary to correct the violation." Furthermore, there was absolutely no consideration or analysis by the Court of the impact of the TPA upon public safety. The TPA sets forth Defendants' plan to address issues of concern with the State prison medical care system. The TPA contains six general strategic goals:

A. Ensure Timely Access to Care;

B. Improve the Medical Program;

C. Strengthen the Health Care Workforce;

D. Implement Quality Assurance and Continuous Improvement;

E. Establish Medical Support Infrastructure; and

F. Provide Health Care and Health Care-Related Facilities. See Ex. 3 of Defendants' Motion to Dismiss, Turnaround Plan of Action, pg. 4.

The sixth goal, "Provide Health Care and Health Care-Related Facilities" calls for improving and/or building new prison facilities at each of the 33 CDCR prison locations to provide health care services. The Defendants' plan also calls for the construction of seven new long-term care facilities at existing CDCR institutions with administrative, clinical and housing facilities to serve up to 6% of the state inmate population who have long-term medical and/or mental health needs. See Ex. 3 of Defendants' Motion to Dismiss, Turnaround Plan of Action, pg. 25.

According to the TPA, the Defendants intend to begin construction on the first of these seven facilities by February 2009. The Defendants have a goal of completing the assessment and planning for the upgraded administrative and clinical facilities at each of the 33 CDCR locations by January 2010. See Ex. 3 of Defendants' Motion to Dismiss, Turnaround Plan of Action, pg. 26, 28

As of December 2008, the Defendants have submitted to the necessary communities a Notice of Preparation for an Environmental Impact Report ("EIR") under the California Environmental Quality Act ("CEQA") pertaining to proposed construction projects at each of the following locations:

A) R.J. Donovan Correctional Facility, San Diego;

B) Folsom State Prison and California State Prison, Sacramento/Folsom;

C) Northern California Youth Correctional Center, Stockton;

D) California Institute for Men, Chino;

E) California Medical Facility and California State Prison, Solano/Vacaville; and

F) Ventura Youth Correctional Facility, Camarillo.

See. Ex. 5 of Defendants' Motion to Dismiss, pg. 1.

By providing the Notice of Preparation, Defendants have expressed their clear intent to proceed with the plan as set forth in the TPA.

According to the December 2008 Notice of Preparation to Ventura County, Defendants claim that "new correctional health care facilities must be constructed

statewide." With regard to Ventura County, Defendants plan to use a site presently hosting the Ventura Youth Correctional Facility ("VYCF"), a facility housing juvenile wards. Defendants' project will result in the "demolition of existing buildings on the VYCF campus and the construction of one-to three-story buildings totaling approximately 1.1 million square feet of gross floor space." This new facility will "replace the existing VYCF." Additionally, "the site would be completely graded prior to construction of the new facility." Defendants' plan also calls for displacement of the approximately 250 juvenile wards of the VYCF; replacing them with approximately 1,500 adult inmates, including those classified as maximum security risks. See. Ex. 5 of Defendants' Motion to Dismiss, pg. 2-3, 6-7.

Pursuant to the TPA, Defendants intend to seek the Court's intervention to force the State of California, and its taxpaying citizens, to raise and provide over $7 billion to construct the new prison facilities called for in the TPA and to provide an additional $253 million for project costs over the next three years. See Ex. 3 of Defendants' Motion to Dismiss, Turnaround Plan of Action, pg. 30.

In conducting the business of operating the California prison medical system, Defendant has performed the following additional acts: Defendant has conducted town hall meetings in local communities to discuss the construction project; Defendant has hired contracting companies to complete the projects; Defendant has provided media interviews to garner public support for the project; and Defendant has worked with State legislators to carry legislation to pay for the construction. See Declaration of David A. Brewster, Ex. 1 and Ex. 2.

Plaintiff, which corporation is organized by, managed and directed by, and represents the taxpaying citizens of Ventura County, is particularly concerned with Defendants' activities in Ventura County and their plan to demolish the Ventura Youth Correctional Facility in Ventura County, California and replace it with a prison hospital at the expense of Ventura County (and State of California) taxpayers.

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As expressed below, Plaintiff contends that Defendants are exceeding their authority under Federal Law, at the damage and expense of the taxpaying citizens of Ventura County and the State of California.

ARGUMENT

A. THIS COURT DOES NOT LACK SUBJECT MATTER JURISDICTION

In their motion to dismiss, the Defendants argue that Plaintiff was required to seek permission to sue because the construction of a Billion Dollar prison hospital "is unquestionably part of the Defendants' overall administration and governance of the prison medical care system." To support this argument they cite to Barton v. Barbour, 104 U.S. 126; 26 L.Ed. 672 and several of its progeny. However, upon close review of these cases and the facts before this Court, the Defendants' reliance on Barton is misplaced.

Barton and its progeny stand for the simple proposition than when a receiver is being sued for merely administering the estate, permission to sue must be obtained from the court appointing the receiver.

However, in this case the Defendants are doing much more that merely administering and governing the prison medical health system. They are engaged in a massive multi-billion dollar expansion of the prison health system by conducting and intending to conduct the following acts and transactions: (1) constructing several billion dollar prison hospitals; (2) spending millions of taxpayer dollars hiring contractors and consultants to complete the projects; (3) conducting town halls to discuss the construction; (4) providing media interviews to garner public support for the project; (4) filing lawsuits to coerce the State of California to pay for construction; (5) working with State legislators to carry legislation to pay for the construction. These acts go far beyond the mere "administration of the estate." As such, the Defendants' acts and transactions constitute the "carrying on the business" of the prison health system and therefore the exception to the Barton rule codified in 28 USC § 959 (a) applies and permission to sue was not required.

1. Plaintiff Is Not Required To Seek Permission From Judge Henderson To Sue Defendants.

The Barton doctrine provides that "[b]efore suit can be brought against a court-appointed receiver, leave of the court by which he was appointed must be obtained." In re Crown Vantage, Inc. v. Fort James Corp., 421 F.3d 963 (9th Cir. 2005). Since Barton was decided, many cases have considered the issue and have followed the Barton rule. However, for the reasons that follow, it is clear that this case is distinguishable from those following Barton, and that general rule stated therein does not apply to this case.

In Barton, *supra*, the plaintiff filed a personal injury suit against the receiver in control of a railroad that the plaintiff claimed was at fault for her injuries. Plaintiff was a passenger in a sleeping car upon the above railroad when the sleeping car was thrown from the tracks and the plaintiff sustained bodily injury. Defendant was a court appointed receiver of all assets of the railroad and at this time was acting as operating manager for the railroad. Defendant argued that the case should be dismissed because the plaintiff had failed to obtain permission from the court that appointed him. The United States Supreme Court agreed, stating that "it is a general rule that before suit is brought against a receiver leave of the court by which he was appointed must be obtained." Barton, *supra* at 674.

In another case following the Barton rule, In Re Delorean Motor Company Co., 991 F.2d 1236 (1991), the Court considered a complicated set of facts stemming from the Bankruptcy of the Delorean motor car company. The Delorean Motor Company filed for Bankruptcy and the Court appointed a receiver. Later, the Receiver instituted a fraudulent land conveyance action against John Delorean and Howard Weitzman, contending the transfer was fraudulent. The lawsuit was settled, however subsequent to the lawsuit, Weitzman filed a malicious prosecution action without permission of the bankruptcy court against the receiver.

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The Court held that Weitzman's lawsuit must be dismissed because he failed to obtain permission from the appointing Court. The Delorean Court stated that the exception in Section 959 (a) did not "apply to suits against the trustee for actions taken while administering the estate." Id. The Court went on to say "merely collecting, taking steps to preserve, and/or holding assets, as well as other aspects of administering and liquidating the estate, do not constitute 'carrying on business' as that term has been judicially interpreted." Id. The Court found that the receiver's act of suing Weizman fell in the category of taking steps to preserve the estate and, thus, required permission before Weizman could sue. Id.

The Barton rule was also addressed by the First Circuit in Muratore v. Darr, 375 F. 140 (2004). There, the plaintiff, Joseph Muratore, owned and controlled Columbus Mortgage Company, Inc. In 1991, the company filed for Bankruptcy. The Bankruptcy Court appointed the defendant Stephen Darr as receiver. In 2002, Muratore filed a lawsuit against Darr in his capacity as receiver, in the United States District Court. In his suit, Muratore alleged that Darr "did not faithfully perform the duties of his office and committed acts of malfeasance and/or malfeasance in the performance of his duties." *Id.* Muratore did not obtain permission from the Bankruptcy Court prior to filing the lawsuit. Muratore argued that he was not required to obtain permission pursuant to section 959 (a).

The Court of Appeal disagreed and held that section 959 (a) did not apply in this case. The Court found that "the allegations in the complaint focused upon Darr's actions in the fulfillment or non-fulfillment of his fiduciary responsibilities as trustee, as opposed to acts or transactions in the furtherance of Muratore's business." The Court reasoned that because the complaint focused on the Darr's activities administering the estate, Muratore had to obtain permission to sue.

Each of the above cases establishes a common theme. When a receiver's activities merely administer the estate, or maintain or dispose of the original assets, permission to sue is required. Or as Learned Hand wrote "that to merely hold matter

in status quo; to mark time, as it were; to only do what is necessary to hold the assets intact; such activities did not constitute carrying on the business." Vass v. Conron Bros. Co., 59 F.2d 969, 971 (2nd Cir. 1932). Therefore, it is clear that the Barton rule only applies to those cases where the Receiver is merely maintaining the assets for the estates or company.

In the instant matter, the Defendants are engaged in a massive multi-billion dollar expansion of the prison medical health system. Their actions don't even remotely resemble the actions of the receivers in any of the cases cited. For example, unlike the receiver in the Delorean case, who sued to maintain property which he believed was property of the trust, Defendants are engaged in a lawsuit against the State of California where their objective is to obtain anywhere from 3 to 7 billion dollars so they can construct 3 to 7 massive prison hospitals around California. *See*, 991 F.2d 1236 (1991). Also, unlike the receiver in Muratore, the Defendants are not merely administering the prison medical health system. Instead, they are attempting to massively change and expand it. These actions go far beyond simply *maintaining* the status quo. Defendants are conducting the business of the prisons, and the Barton rule does not apply to the suit filed by Plaintiff

2. The Exception to the Barton Rule, 28 U.S.C. § 959(a), Is Applicable To This Case And Permission To Sue Defendants Is Not Required.

It has long been established that there exists an exception to the Barton rule. This exception is codified in 28 USC § 959(a). The purpose for the exception is to confer upon citizens the unconditional right to bring an action in local courts and to have justice and the amount of his demand determined by verdict of jury. It keeps parties from being compelled to litigate at a distance, or in any other forum, or according to any other course of justice, than he would be entitled to if property or business were not being administered by federal court. Gableman v Peoria, D. & E. R. Co., 179 US 335, 45 L Ed 220, 21 S Ct 171 (1900).

Pursuant to 28 USC § 959:

> "(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury."

28 USC § 959(a).

Federal courts that have confronted Section 959 have deemed it to be an exception to the Barton doctrine. In re Crown Vantage, *supra,* at 971. If a receiver is being sued for "acts or transactions in carrying on business connected" with the property it has in its possession, then the plaintiffs do not need leave to sue. The First Circuit found the term "acts or transactions in carrying on business connected with" the property in possession of the receiver to mean "acts or transactions in conducting the debtor's business in the *ordinary sense of the words* or in pursuing that business as an operating expense." Muratore, *supra,* at 144.

Therefore, if the trustee or receiver makes affirmative decisions to take on conducting the business as if the previous possessors of that property were still in possession, then the statutory exception to Barton applies. Once a court is satisfied that the receiver is carrying on the business of that property, rather than merely holding that property, then leave of the appointing court is not needed to file suit.

Courts have found the statute to apply where: a trustee continued the business of a debtor in operating a railroad, and the trustee had been sued in his representative capacity for damages for use of another's tracks. Thompson v. Texas Mexican Ry. Co., 328 U.S. 134, 138 (1946) (applying predecessor to section 959(a)). Courts have also allowed the exception in a case for wrongful death and injury resulting to a member of the public in a grade crossing accident. Valdes v. Feliciano, 267 F.2d 91,

94-95 (1st Cir.1959). Also, the exception has been held to apply to an employee's claims arising from injuries caused by overwork at a railroad company operated by the trustee and the trustee's withholding of an employee's pension. Haberern v. Lehigh and New England Ry., Co., 554 F.2d 581, 585 (3d Cir.1981).

Here, as applied to the Defendants, it is abundantly clear they are conducting acts or transactions under the language of the statute, and, thus, leave of the appointing court (Judge Henderson) is not needed. The Defendants are not merely holding the assets of the California Prison Health Care System intact, they are being proactive, and are continuing the business of the California Prison Health Care System. They admit to as much in their brief when they state that "the Receiver was given 'all powers vested by law in the Secretary of the CDCR' . . . and the Secretary's exercise of such powers was suspended." Motion to Dismiss, p.2, Lines 6-10. Defendants are acting in the business of the California Prison Health Care System by undertaking to build new facilities, seeking to expand upon old facilities, to hire more employees, and to raise more money to fund the projects. Defendants have conducted town hall meetings to discuss the Ventura project. They have conducted media interviews in hopes to increase public support for the project. They have filed lawsuits against the State of California in hopes to force them it fund the project. In essence, the Defendants are doing anything but keeping the assets intact. Therefore, Section 959 absolutely applies to the Defendants, and leave of the appointing court is not needed to bring suit against them.

B. PLAINTIFF HAS STANDING TO BRING THIS ACTION

Defendants contend that Plaintiff has failed to properly allege standing in this matter by relying on the theory that Plaintiff represents "taxpayers" and that taxpayers have no standing in Federal Court. In doing so, Defendant over-simplifies the facts alleged and misses the nuances of Plaintiff's claims. A review of the facts and federal law make it clear that Plaintiff has properly alleged standing.

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1. Plaintiffs Have Properly Plead Standing.

To properly establish standing, a Plaintiff bears the burden of showing 1) injury in fact that is concrete and particularized and actual or imminent; 2) that there is a causal connection between the injury and the conduct complained of; and 3) that the injury will likely be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561; 112 S. Ct. 2130; 119 L. Ed. 2d 351 (1992). In the case of complaints for injunctive relief, the "injury in fact" element of standing requires a showing that the plaintiff faces a threat of ongoing or future harm. Park v. Forest Service of the United States, 205 F.3d 1034 (8th Cir. 2000); City of Los Angeles v. Lyons, 461 U.S. 95, 101-05, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983). However, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presume that general allegations embrace those specific facts that are necessary to support the claim.'" Lujan, *supra* at 563, *quoting* Lujan v. National Wildlife Federation, 497 U.S. 871, 889, 111 L. Ed. 2d 695, 110 S. Ct. 3177 (1990).

Here, Plaintiffs have repeatedly alleged the threat of future real and irreparable injury as a result of Defendants' violation of 18 U.S.C. § 3626. *See, e.g.,* Complaint, ¶¶ 22,26,29. Implicit in the Complaint is the real threat to members of Plaintiff's organization as a result of increased burden on water and sewer and other available utilities as a result of constructing a 1.1 million square feet facility meant to house 1,500 inmates. Further, as a representative of citizens of Ventura County, Plaintiff has alleged the increased burden on local police, fire, and hospitals, the consequences of which will be felt by those represented by Plaintiff. Further, Plaintiff has properly shown that its members have an interest in the nearly $7 billion that Defendants are attempting to unlawfully take. It cannot be disputed that once the Defendants receive the funds and spend them, they will not be able to repay said monies should Plaintiff later prevail.

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Further, Plaintiffs, as citizens of California, have the right under the 10th Amendment to the U.S. Constitution to be free from Defendants' usurpation of State funds and control. This threat is plead as very real, imminent and as a harm directly caused by the actions of Defendants.

Based on the above, and due to the fact that Plaintiff must be given the benefit of the doubt at this stage in the pleadings, Plaintiff has properly alleged standing and the Motion to Dismiss should be denied.

2. Defendants' "Taxpayer" Standing Argument Is Inapplicable.

Defendants' argument that Plaintiff's members are "taxpayers" is equally flawed.

While, it is generally true that a "taxpayer" has no standing to sue based on misappropriation of funds, the general rule has been applied in cases where the suit is against the taxing authority, and not a separate, third party. *See, e.g.,* Arakaki v. Lingle, 477 F.3d 1048 (9th Cir. 2007); Daimler-Chrysler Corp. v. Cuno, 547 U.S. 332, 126 S.Ct. 1854; 164 L.Ed.2d 589 (2006). Indeed, we invite Defendants to produce a case where said rule has applied in a suit against a third party and not the taxing authority.

Here, Plaintiffs are not seeking to enforce their claims merely as taxpayers. They are also members of the community who will directly be affected by the building of an enormous prison facility. Regardless, the suit is based on enjoining Defendants from improperly taking monies and is not based on Defendants use of funds properly obtained from Plaintiff's members. This distinction is important. Plaintiff is allowed to seek injunction against Defendant, even if the only basis were as a taxpayer, because Defendant is not the target of, not is Defendant protected by the general standing rule, which is reserved for government actions in the expenditure of funds.

Quite simply, the "taxpayer" standing rule is not applicable to this case. As a result, Defendants' Motion to Dismiss should be denied.

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3. Plaintiff Has Standing Under The "Zone Of Interest" Test.

Separate and distinct from the proper standing as alleged above, Plaintiff has standing under the "Zone of Interest" test for federal standing. Plaintiffs have standing to challenge Defendants' actions when the interest the plaintiff seeks to protect falls within the "zone of interest" protected by the federal law upon which plaintiff's claim rests. Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970). This test for standing is not "especially demanding." Clark v. Securities Industries Association, 479 U.S. 388, 399 (1987). Plaintiff need only present a plausible basis for concluding that her claims fall within the zone of interests protected by the statute. Air Courier Conference of America v. American Postal Workers Union, 498 U.S. 517, 523-528 (1991).

When implementing any relief under the PLRA, the Defendants are required to "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." 18 U.S.C. § 3626(a)(1)(A). This language on its face implies that any person affected by the relief granted as a result of public safety concerns (and those related to the operation of the criminal justice system) has standing to challenge the implementation of relief under the PLRA. Here, Plaintiff has properly alleged that its members will be damaged as a result of a negative impact on public safety and as a result of the extra burdens place upon its fire, police, hospital, and justice systems as a result of Defendants' actions in Ventura County. *See, e.g.,* Complaint, ¶¶ 22,26,29. Accordingly, Plaintiff has sufficiently plead facts giving rise to standing in this matter.

C. PLAINTIFF'S CLAIMS ARE RIPE FOR ADJUDICATION

The ripeness doctrine serves the purpose of avoiding premature adjudication. Nelson v. NASA, 530 F.3d 865, 873 (9th Cir. 2008). "One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough." Pennsylvania v. West Virginia, 262 U.S. 553, 593 (1923). Plaintiff in this action seeks preventative relief in the form of an injunction to prevent

the construction of a prison medical facility in Ventura County in violation of the PLRA. Granted, the construction of the proposed facility has not yet begun. However, the construction, and consequently the injury that such construction will inflict upon Plaintiff, has certainly been threatened by Defendants, and the injury is therefore impending. Indeed, courts will find ripeness in a claim where "concrete action" applying a regulation to the plaintiff's situation "threatens to harm him." Nat'l Wildlife Fed'n, *supra,* at 891.

The Receiver has put forth, in his court-approved TPA, plans to construct as many as seven new prison medical facilities in the State of California. In accordance with the TPA, Defendants have specifically targeted the city of Camarillo as an intended location to build one of the Defendants' new facilities. The Receiver has acknowledged that he has begun the process of obtaining an Environmental Impact Report ("EIR") under the California Environmental Quality Act ("CEQA") in the city of Camarillo. This act of the Defendants, by itself, proves that the injury brought by the construction, while not consummated, is at the very least, impending. No doubt, beginning the CEQA process is a concrete action, and is a significant step towards constructing the facility in question. Thus, Plaintiff at this stage is facing a threatened harm. Therefore, this suit is not brought prematurely, and is ripe for adjudication.

Defendants argue against ripeness in that that the proposed construction project is "not certain to occur," and that Plaintiff has not yet been impacted. This argument fails to take into account the form of relief that Plaintiff seeks of this Court. As discussed above, the impending nature of the injury is enough to seek preventative relief. Pennsylvania, *supra,* at 593. Plaintiff has brought suit for injunctive relief precisely to prevent Plaintiff from being damaged as a result of the construction, the initial stages of which have already begun. Therefore, Plaintiff need not wait to suffer actual damages before bringing suit, and Plaintiff's claims are ripe for adjudication.

Defendants also argue that courts must refrain from deciding issues which are "theoretical, speculative or abstract." The issues implicated by this suit are far from

speculative. The Defendants have taken affirmative steps to begin the construction of a facility in Camarillo. By beginning this process, Defendants have manifested their intent to construct the facility. The Defendants' actions elevate the issues raised by Plaintiff above mere speculation, and as a result, Plaintiff's claims are ripe for adjudication.

D. THE RECEIVER IS NOT IMMUNE FROM SUIT.

In making their argument that they are immune from suit, Defendants ignore the fact that they previously have argued all the reasons why they believe permission to bring suit against them is necessary. They either don't consider or choose to turn a blind eye to the fact that absolute immunity would negate any reason to seek permission from Judge Henderson and would completely void any discussion of the *Barton* rule or its exception under 28 U.S.C. § 959(a). The reason is simple; Defendants are not immune from Plaintiff's suit.

In making their arguments, Defendants rely on numerous cases interpreting and discussing the immunity concept in relation to claims brought pursuant to 42 U.S.C. § 1983, which do provide immunity from suits brought under said statute.

However, it is well established in law that outside the context of claims for violations 42 U.S.C. § 1983, judicial officers are ***NOT*** immune from claims for injunctive relief.

With regard to claims for relief not based upon 42 U.S.C. § 1983, federal Courts "never have had a rule of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence. None of the seminal opinions on judicial immunity, either in England or in this country, has involved immunity from injunctive relief." Pulliam v. Allen, 466 U.S. 522, 536-537; 104 S. Ct. 1970; 80 L. Ed. 2d 565 (1984). "[N]either judicial immunity nor quasi-judicial immunity bars a claim for prospective injunctive relief." Bernstein v. State Of New York, 2008 U.S. Dist. LEXIS 61269, p.30. In fact, numerous Courts have recognized and upheld the right to sue judicial officers for

injunctive relief. *See,* Farid v. Goord, 514 F. Supp. 2d 482, 496 (S.D.N.Y. 2007); Melnitzky v HSBC, Bank USA, 2007 U.S. Dist. LEXIS 5272, p.5 (S.D.N.Y.2007).

Here, Plaintiff's entire suit seeks injunctive relief, indeed, it is the only relief sought of this Court. Further, Plaintiff seeks no relief under 42 U.S.C. § 1983, such that Defendant's arguments regarding immunity, thereunder, are inapplicable. Instead, Plaintiffs are seeking injunctive relief as a result of repeated and intentional violations of Federal Law. According to the long established principles of law, Judicial officers are not immune from suits seeking injunctive relief. Accordingly, Defendant's Motion to Dismiss is entirely without merit and should be denied.

DATED: March 2, 2009

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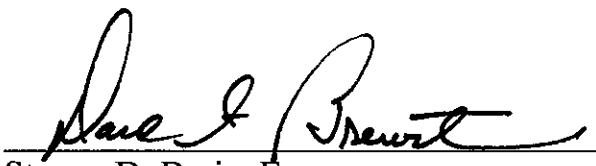
By: 

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